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Supreme Court of the United States

1967

No. ~~275~~ 13

STEPHEN R. WAINWRIGHT,

Petitioner,

versus

CITY OF NEW ORLEANS,

Respondent.

RESPONSE OF THE CITY OF NEW ORLEANS IN OPPOSITION TO THE ISSUANCE OF A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

ALVIN J. LISKA,
City Attorney,

RICHARD C. SEITHER,
Assistant City Attorney,
City Prosecutor,

Attorneys for Respondent,
Room 2W23 — City Hall,
New Orleans, Louisiana.

HAUSER-AMERICAN, "LEGAL PRINTERS", 441 GRAVIER STREET, NEW ORLEANS, LA.

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(A three-page summary of the City's Response herein.)

1. No name-calling Response in kind intended.
   But Defendant-Appellant-Petitioner Wainwright and his Attorney, Dan A. Spencer, display so obvious an inability to deal with facts they, and their presentation of the record in this matter, are UNWORTHY OF BELIEF. (This is the City's basic answer, and proof of its validity runs throughout this Response brief.)
   Pages 1-30

2. Opinions of the Courts below are correct as reported, but serious record omissions noted.
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3. Proof that Defendant-Appellant-Petitioner accepted record as transmitted from Municipal Court; letters, Petitioner's petition say so.
   Pages 4-6

4. The ordinances involved.
   Pages 6-7

5. City of New Orleans has long embraced Justice Douglas' views on "Vagrancy and Arrest on Suspicion;" 1957 police orders forbidding arrest and booking on "Vagrancy pending investigation of another offense" offered as proof.
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6. Wainwright's Questions presented for Review not grounded in fact.
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7. Wainwright's facts, Wainwright's law.
   Page 11

8. Appellate record is appellant's responsibility to perfect, and is matter between appellant and clerk of court.
   Certainly prosecution has no burden to perfect defendant's appellate record which is designed to overthrow a conviction of defendant that prosecution has already obtained. Prosecution cannot possibly be shouldered with responsibility of reversing itself in hard-earned verdict it has already won and wants to maintain.
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9. Wainwright convicted only of assaulting police officers; no other matters properly before this court. Page 16

10. Details at arrest scene reviewed; in light of Wainwright's suspicious behavior there, please consider the alternative. Pages 16-19

11. Defendant's Attorney Spencer never arrested, booked, charged or tried for vagraney.
Just another untruthful "error" which a mere reporting of the record could and should have avoided; another flagrant example of Petitioner's irresponsibility, unworthiness of belief. Page 19

12. No unlawful search of Petitioner Wainwright. Page 20

13. No denial of counsel. Pages 21-24

14. What "brutal beating"? Pages 24-28

15. And no absence of probable cause. Page 18

16. All these are reasons why there can be no application here of the law and authorities Wainwright cites—to which law the City of New Orleans subscribes and which it respects and follows. Pages 23-24 and Pages 7-11

17. Conclusion and Prayer. Pages 29-30

18. Certificate. Page 30

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Supreme Court of the United States

No. 275

STEPHEN R. WAINWRIGHT,

Petitioner,

versus

CITY OF NEW ORLEANS,

Respondent.

RESPONSE OF THE CITY OF NEW ORLEANS IN OPPOSITION TO THE ISSUANCE OF A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA.

The City of New Orleans herewith submits its response in opposition to the issuance of a writ of certiorari to the Supreme Court of Louisiana.

NO RESPONSE IN KIND INTENDED

There is considerable name-calling directed at the City of New Orleans, her police officers, her judges and her City Attorneys in the petitions and briefs filed in this voluminous record by Defendant - Appellant - Attorney Stephen R. Wainwright and his one-time Attorney, Dan A. Spencer, (e.g. — calling the Municipal Court proceedings "this shameful travesty;" accusations that certain judges declared they had to rule with the police because they depended upon police support for their election and hoped-for reelection; and the like.)

Despite this, the City of New Orleans has no intention of answering in kind.

This response heavily points up the remarkable inability of Wainwright and Spencer to report facts, their complete disregard for proving or even attempting to prove allegations and accusations of the most damaging nature.

The City does this only because it must do this to turn back what the City considers an outrageously unfounded attack on a City which was performing only its basic police function of trying to solve murder — a City which believes that its primary responsibility is to protect its citizens in their person and property.

A City, indeed, which believes that citizen's right to be protected in his person and property easily primes all other of that citizen's rights, including even his precious rights against self-incrimination (5th Amendment), unlawful search and seizure (4th Amendment), right to counsel (6th Amendment), freedom of speech (1st Amendment), and other equally essential rights.

The City insists that *none* of Wainwright's constitutional guarantees, rights or privileges were denied him in any phase of this case.

The City insists its police department, its attorneys and its judges all performed only their duty — and did it capably and well.

All this litigation — which has attained ridiculous proportions — could have been avoided by the simple expedient of Wainwright merely baring his left forearm.

The City does not consider it unreasonable to ask The Supreme Court of the United States to rule that

THIS SLIGHT INCONVENIENCE TO WAINWRIGHT SHOULD YIELD TO THE GREATER PUBLIC NEED FOR SOLVING MURDER IN THE COMMUNITY.

The incidence of murder — and the influx of malcontents, recalcitrants, and irresponsible troublemakers — have reached record highs in New Orleans.

OPINIONS OF THE COURTS BELOW

The opinions of the Criminal District Court Parish of Orleans and of the Supreme Court of Louisiana, as presented by the Petitioner in his Appendix B, are correct.

But there is omitted by Mr. Wainwright two other parts of the Criminal District Court record, which shows that the Honorable Thos. M. Brahney, Jr., Judge of Section "D" of the said Criminal District Court wrote Wainwright's attorney, Dan A. Spencer, that "I am unable to take any action in this matter until you advise me whether or not the record, which I have in my court, is complete and accurate and that you wish to proceed on the record as is.", and Spencer's answering letter informing Judge Brahney, "we will stand on the record as transcribed." (Here are copies of both letters.):

November 17, 1965.

Mr. Dan A. Spencer,
Attorney at Law,
3420 Greenwood Road,
Shreveport, Louisiana #71109.

Re: City of New Orleans versus Stephen R. Wainwright, No. 192-168

Dear Mr. Spencer:

This morning I located your brief which you referred to in your letter, in case #189-939. From the first paragraph of your brief I am unable to take any action in this matter until you advise me whether or not the record, which I have in my court, is complete and accurate and that you wish to proceed on the record as is. If the record is not complete and accurate then, you take whatever steps you deem necessary to see that it is made complete and accurate. I must admit that I am confused by the opening paragraph of your brief and, until you clarify it further for me, I will not take any further action in this matter.

For your information, the matter was argued briefly by the City this morning; however, because of these later developments I will continue this matter as an open case until I hear from you further.

Very truly yours,

THOS. M. BRAHNEY, JR.

TB:TS

Clerk's Office 3-8 1966

A TRUE COPY
L. Altobello, Deputy Clerk,
Criminal District Court,
Parish of Orleans

DAN A. SPENCER
Attorney and Counselor at Law

Telephone
631-7469

3420 Greenwood Road
Shreveport, Louisiana
71109

November 17, 1965

Judge Thomas M. Brahney, Jr.
Criminal District Court
Section "D"
Parish of Orleans
New Orleans 19, Louisiana

Re: City of New Orleans v. Stephen R. Wainwright, No. 192-168

Dear Judge Brahney:

Thank you for your letter of November 17, 1965. My objection to the record is primarily based on the failure of the reporter to include therein my argument on the law in making certain objections and motions during the course of the trial.

It is my understanding that legal objections to a trial in Municipal Court may be supplied on appeal in the Criminal District Court. Judge Becker has previously informed me that it is not necessary to reserve bills of exception in the Municipal Court in order to preserve errors for the appeal.

I believe there are in this case errors patent on the face of this record. These are, I believe, fully covered in my brief. If your appreciation of the law is in accordance with mine, i e, that it is not necessary to reserve bills of exception, or to have the record show the legal grounds argued in support of objections and motions, we will stand on the record as transcribed.

Thank you for taking the trouble to write me about this matter. I am, with kindest regards

Yours very truly,

/s/ DAN A. SPENCER
Dan A. Spencer

DAS/jcd

Clerk's Office 3-8 1966

A TRUE COPY
L. Altobello, Deputy Clerk,
Criminal District Court,
Parish of Orleans

Wainwright also failed to include in his appellate record the City's answer to defendant's application to the Louisiana Supreme Court for writs. And the City stresses it is Wainwright's failure (not the City's) because it is HIS appellate record and HIS obligation to perfect it.

Of course, it could have been another oversight on the part of Mr. Wainwright, but this omission deprives the record of sacramental points of law on which the highest court of this State ruled in this case.

It is most respectfully submitted that Wainwright's failure to request rehearing or perfect any bills of exception before going to the Supreme Court of Louisiana was, in itself, enough to prevent the Louisiana Supreme Court from ruling any way other than it did.

The City's answer to Wainwright's application to the Supreme Court of Louisiana is something that Wainwright should have had in his Petition to the Supreme Court of the United States, so it is made part of the record herein. (Appendix A.).

It is placed early in this Response, because a reading of it at the outset might well resolve this case and dispense with any need to read the rest of this voluminous record.

THE ORDINANCES INVOLVED

The ordinances — Sections 42-24, 49-1 and 49-2 are correct as presented by the Petitioner; however only Section

42-24 is before this Honorable Court because the Municipal Court conviction of Stephen R. Wainwright under Section 49-2 — resisting an officer — was reversed in the Criminal District Court, Parish of Orleans (full copy of that judgment is in your Wainwright petition) and that reversal was upheld by the Louisiana Supreme Court. So that the only matter before the United States Supreme Court, the City of New Orleans respectfully submits, is the conviction of Stephen R. Wainwright for assaulting the officers of the New Orleans Police Department. (The City is making part of this response brief a complete transcript of the trial of Wainwright for those assaults. See Appendix B.)

MR. JUSTICE DOUGLAS AND THE SIGLER CASE FAVOR THE CITY OF NEW ORLEANS AND NOT MR. WAINWRIGHT

Not since 1958 have there been any arrests on suspicion in New Orleans.

Not since 1958 have there been instances of persons booked for vagrancy pending investigation of another offense.

Witness the following orders from the Superintendent of Police, and kindly note their dates.

DEPARTMENT OF POLICE
INTEROFFICE CORRESPONDENCE

TO: ALL BUREAUS, DISTRICTS AND DIVISIONS DATE: AUG. 8th, 1957

FROM:

SUBJECT: DEPUTY SUPERINTENDENT JOS. I. GIARRUSSO

R.S. 14:107

Effective immediately, members of this Department will discontinue using R.S. 14:107, Vagrancy, as a holding charge.

It is the opinion of the District Attorney's Office that if an officer has sufficient evidence to arrest a suspect that he has enough evidence to place a direct charge in connection with the crime under investigation. The fact that a further investigation is being conducted may be indicated by placing the words "under investigation" in pencil on the arrest book. This will be eradicated when such investigation is completed, or the prisoner is bonded or paroled.

It must be understood that the District Attorney's Office is not bound to accept as final, the charge which is made on the arrest book. The Criminal District Court affidavit, as filed, may accuse a person of a greater crime or a lesser crime than the one on which the subject was arrested. Only the facts, as submitted in a report to the District Attorney's Office, will guide the action in the acceptance of a specific charge.

R.S. 14:107 Vagrancy will be used if the facts warrant such a charge under one of the sections of this statute. The wording "pending investigation" will not be used in connection with such a charge. This article is not intended to be used indiscriminately. It is for use only when it can be supported by facts.

PROVOSTY A. DAYRIES,
Superintendent of Police

BY: JOSEPH I. GIARRUSSO,
Deputy Superintendent

PAD:JIG/b
NOPD
FORM #105

DEPARTMENT OF POLICE
INTEROFFICE CORRESPONDENCE

TO: ALL BUREAUS, DISTRICTS & DIVISIONS DATE 8/14/57

FROM: DEPUTY SUPERINTENDENT JOS. I. GIARRUSSO

SUBJECT: R. S. 14:107

On August 9, 1957, an inter office correspondence was sent out explaining the use of R.S. 14:107 "pending investigation."

The last sentence of the second paragraph of this correspondence reads: "This will be eradicated when such investigation is completed, or the prisoner is bonded or paroled." It has been brought to my attention that this sentence requires some clarification.

As you know there can be no erasures on an arrest book. Therefore, when the investigation is completed, or the prisoner is bonded or paroled, you will place a red line through the notation "under investigation". The last sentence of the second paragraph of my August 9, correspondence should read:

"This will be red-lined when such investigation is completed, or the prisoner is bonded or paroled."

The officer who red lines the words "under investigation" will place his initials on the arrest book, along with the time and date the investigation was completed.

PROVOSTY A. DAYRIES
Superintendent of Police.

BY: JOSEPH I. GIARRUSSO
Deputy Superintendent.

JIG/t

NOPD
FORM #105

When Wainwright cites *U. S. v. Sigler*, 162 F. Supp. 256 (1958), and "Vagrancy and Arrest on Suspicion," Douglas, Justice William O., 70 Yale L. J. 1 (1960), he cites law favorable to the City of New Orleans, not to himself. The City has long embraced Justice Douglas' views in this area and rejected, as far back as 1957, the practice of arresting on suspicion, and the practice of arresting or booking on "Vagrancy pending investigation of Other Offenses."

The marked variance between Wainwright and the City is that Wainwright — irresponsibly and WITHOUT PROOF — accuses the City of New Orleans of continuing the practice, and the City offers concrete proof that the practice was discontinued by written order of the Police Superintendent in 1957.

QUESTIONS PRESENTED FOR REVIEW

The questions raised in this matter are all questions of fact rather than law and the City of New Orleans must deny, categorically and specifically, the allegations contained in Petitioner's five questions as being simply and grossly untrue.

The City submits that if the facts are accepted by this Honorable Supreme Court of the United States as Petitioner-Attorney Wainwright presents them in his five questions, there is no point in offering opposition. But, the fact is that these questions as presented by Petitioner-Attorney Wainwright are gross distortions and just not true.

WAINWRIGHT'S FACTS, WAINWRIGHT'S LAW

The City of New Orleans respectfully submits that the assertions and allegations Defendant-Attorney-Appellant Stephen R. Wainwright and his attorney, Dan A. Spencer, have stated as facts in this record, are reckless, irresponsible, most often mere mouthings totally unsupported by proof, or offer of proof, and — to state the City's position bluntly — **UNWORTHY OF BELIEF.** They were found unworthy of belief by one grand jury, a police bureau of investigation, the district attorney's office of Jim Garrison, and three courts, including the Supreme Court of Louisiana.

THE LAW Wainwright cites is, for the most part, good law with which the City has no quarrel because it is the law which the City follows to the letter. The only point of contention the City offers in this area is that far too much of the law Wainwright cites has no place in this case because he seeks to apply it to alleged happenings that just did not happen. For instance:

Of course, Wainwright's convictions should be reversed if The Supreme Court of the United States is willing to accept **WITHOUT PROOF** Wainwright's statement he was stopped by two New Orleans policemen and ordered "to take off his clothes" on Bourbon Street (Wainwright variously reports this as "ordered to disrobe" and "ordered to strip to my waist.")

Of course, the City should be reversed if it denied Wainwright his right to counsel. But it just isn't so, and the City proves it shortly.

Of course, the City should be reversed if members of her Police Department administered "a brutal beating" to Wainwright. But Wainwright has had over two years

now to offer some proof, some medical evidence, and he has not.

REGARDING INCOMPLETE APPELLATE RECORD

Of course, the City should be reversed if it resorted to so dastardly an act as to fail to complete Wainwright's appellate record. But in Wainwright's Petition for Writs, which Your Honors have had before you since June of this year, there is stated at Page 32, "The testimony which is omitted is not crucial and * * * the defendant is willing to have his appeal decided on the record as transmitted."

And on Page 40 of that same Petition for Writs (concluding paragraph) there is stated: "Counsel feels that the record in this case adequately demonstrates the defendant's innocence and therefore will rely on the record of the facts as transmitted, supplying in this brief the legal ground on which he relies."

Despite this, Judge Brahney wrote Wainwright's attorney, Spencer, on this point **before** ever deciding Wainwright's first appeal, and Your Honors have already seen in this response the letters of Judge Brahney and Attorney Spencer.

Nonetheless, Wainwright raises the same point about incompleteness of the record before the Supreme Court of the United States, and the City of New Orleans is ordered to incur this staggering expense of completing the appellant's record.

The City of New Orleans believes this is patently unfair and respectfully calls upon the Supreme Court of the United States to order Defendant-Appellant Wainwright to pay this staggering bill.

As far back as 1920, the Supreme Court of Louisiana placed the burden of perfecting the defendant's appeal squarely on the defendant-appellant, where it belongs. *State v. Morgan*, (1920), 147 La. 205, 84 So. 589, certiorari denied 40 S. Ct. 588, 253 U.S. 498, 64 L. Ed. 1032.

> "As appellant, obligation rested upon defendant to bring his appeal properly before the court and not by means of an imperfect transcript."

In *State v. Lee*, (1906) 116 La. 607, 40 So. 914, it was held: "The state as appellee in a criminal prosecution is not responsible for defects in the transcripts on appeal."

Yet in this Wainwright case, although Wainwright and Spencer had agreed "to have his appeal decided on the record as transmitted"— and BOTH Wainwright and the United States Supreme Court **KNEW** or **SHOULD HAVE KNOWN** this because it's part of Wainwright's Petition for Writs — Wainwright re-urges before the nation's highest court the incompleteness of an appellate record he had already acquiesced in!

As a result, the City of New Orleans has complied with a Court Order of the Supreme Court of the United States — as the City of New Orleans always does — and sends up in this Response records and parts of records in trials for reviling police, resisting an officer, and vagrancy (Appendix D and Appendix E) because Wainwright and Spencer urged (with success up here) that they formed part of an entirely separate trial and convictions for Disturbing the Peace by assaulting police officers. The cases had separate affidavit numbers, separate allotments, separate trials on separate charges and were tried on different dates.

The City believes Wainwright should bear the expenses for completing his appellate brief, as he would have had to

do in Louisiana and which he avoided by accepting the record as transmitted in Louisiana.

Whether done by design or not, Wainwright certainly should not be allowed to waive his FINANCIAL RESPONSIBILITY of completing his appellate record in Louisiana and then seek to place this staggering financial and time-consuming burden on the City of New Orleans by unwaiving before the United States Supreme Court his earlier acceptance of that record.

To get the various transcripts into his appellate record at the time District Court Judge Brahney called his hand on it, Wainwright would have had to pay so much a page — as Wainwright well knew because there is in this record correspondence from the Clerk of the Municipal Court stating the costs, etc., (which see). So he saved those costs by accepting the record as transcribed, failed to bring up any question about incompleteness of his appellate record before the Louisiana Supreme Court where he would still be burdened with the same schedule of transcribing fees, but raised the point before the United States Supreme Court, blaming the City.

Can it be that he could possibly achieve an avoidance of paying these fees in this manner and calling upon the nation's highest court to support him in this?

The City of New Orleans cannot entertain such a belief, and calls upon the Supreme Court of the United States to order that Wainwright pay the high cost of this Response, particularly of the many and varied transcripts the City has been ordered to send up to Washington.

WAINWRIGHT'S CONVICTIONS WERE ONLY ON ASSAULTING POLICE OFFICERS AND NO OTHER MATTERS ARE PROPERLY BEFORE THIS COURT

The City respectfully reminds This Honorable Court that Stephen R. Wainwright was convicted of butting police officers around from wall to wall, not by "merely folding his arms across his chest," as Wainwright puts it. (Please see court testimony, Appendix B, and weigh it against Wainwright's reckless assertions in brief, where he doesn't have to face assistant city attorneys, cross-examination, or confront witnesses against him.)

NO ARRESTS ON SUSPICION; NO BOOKINGS ON VAGRANCY PENDING INVESTIGATION OF ANOTHER OFFENSE

Some of Wainwright's allegations are their own best evidence of his complete irresponsibility. The City cannot insult the intelligence of this nation's highest tribunal by suggesting The Supreme Court would heed for a moment Wainwright's grossly unsupported assertions regarding arrests "on suspicion" and booking of "suspects on a charge of vagrancy pending investigation of other offenses," to-wit:

> "Unfortunately, the practice has been discontinued neither in New Orleans nor elsewhere in the United States. The police refuse to discontinue it." (Pages 15 and 16 of Wainwright's Petition.)

The City asks: How can Wainwright know these things? He's wrong about New Orleans, where the practice was stopped in 1957, and how can Wainwright account for "elsewhere in the United States," wherever that is? Does he purport to speak knowledgeably about this practice for the 50 states?

Relying sacramentally on the legal fundament that he who alleges must prove, the City calls upon the Supreme Court to ask Wainwright for a list of any persons the New Orleans Police Department has arrested on suspicion, or booked for vagrancy pending investigation of other offenses, since 1958.

Now the die is cast. This transcends opinion. It is either a fact or not a fact that persons are arrested in New Orleans on suspicion. It is either a fact or not a fact that persons are booked in New Orleans on charges of vagrancy pending investigation of crime. The City of New Orleans adamantly says **NO.** Wainwright says **YES.** The City should not be called upon to prove the negative. Wainwright should be called upon to prove his most damaging and untrue charges.

If Wainwright cannot produce such a list — and he cannot — then let him produce the record of any **ONE** person arrested in New Orleans on suspicion; and/or of any **ONE** person booked in New Orleans since 1958 on vagrancy pending investigation of other offenses.

The City submits this is of the gravest importance in this case because Wainwright relies on these totally unsupported accusations to establish what he lists on Pages 15 and 16 as Reasons I and II for Granting the Writs of Certiorari he seeks herein. Yet Wainwright, steadfast in his irresponsibility, persists on Page 16:

> "They argue that the power to pick up and hold persons for questioning without probable cause to arrest them for a specific crime is a necessary weapon in law enforcement."

The City asks: Who is the ubiquitous "they" Wainwright is talking about? He's not talking about New Or-

leans police in general (although he believes he is — without proof). And he's not talking about New Orleans police specifically in this case because Officers Boepple and Ottesen had as their probable cause for questioning Wainwright the fact that he fit the description of Johnny Mac Taylor, a subject wanted for murder. And, by all evidence, the officers told Wainwright this at the Bourbon Street scene.

MOST IMPORTANTLY, they also told Wainwright that Johnny Mac Taylor had a tattoo, "Born to raise Hell", on his left forearm and a mere showing of his left forearm would have ended the matter right there, as Judge Brahney found in his opinion printed in Wainwright's Petition and as arresting officers testified in one of the herein transcripts.

Yet, when Wainwright, acting like a petulant child, refused to display his left forearm on Bourbon Street, the police did not then place him under arrest as a suspect in murder. The police explained that the idea of the left forearm inspection was simply to **clear** Wainwright of suspicion, not to incriminate him. And Wainwright **never** was arrested on suspicion of anything. It was at least five minutes or more later before Wainwright was arrested for resisting an officer and vagrancy by loitering because he had no identification on him, no draft card although he's of draft age, and because he THRICE walked away, or tried to walk away, from police when they were questioning him.

PLEASE CONSIDER THE ALTERNATIVE.

Under the immediately preceding set of facts, could the police officers have been expected to just let Wainwright walk away from the questioning?

If so, what happens to law enforcement in the United States?

And to police responsibility to investigate murder in the community?

SPENCER NEVER FACED VAGRANCY CHARGES

When Mr. Wainwright says, as he does on Page 9 of his petition, that Spencer was convicted of vagrancy, this is a MOST SERIOUS error, for these reasons:

(1) Spencer was convicted in the lower court of reviling the police and refusing to move on. Spencer was never, ever booked, charged with, tried, or convicted of vagrancy.

(2) Now these are matters not of opinion but of sheer fact which anybody could have ascertained by merely checking the record and which Wainwright should have ascertained before going up to this highest court of the land.

(3) These are matters which transcend opinion. They are facts which can be easily proved or disproved, like whether or not New Orleans still arrests on suspicion and still book people with vagrancy pending investigation of some offense.

(4) In the light of the importance Wainwright attaches to his unfounded accusations that New Orleans Police arrest on suspicion and BOOK WITH VAGRANCY PENDING INVESTIGATION OF ANOTHER OFFENSE, Wainwright's completely erroneous and irresponsible statement, as a fact, that Spencer was convicted of vagraney may not be so innocent a mistake as it might appear at first blush.

NO UNLAWFUL SEARCH OF WAINWRIGHT

There was never an unreasonable search of Wainwright. When, at the Bourbon Street scene, Wainwright refused to cooperate with the police in their investigation of a capital offense in this City, neither police officer tried to subject him to any unreasonable search.

Wainwright had his jacket taken off of him in the District Station some ten or 15 minutes later when he refused to submit to what is a normal ordinary routine part of police procedure, that of having every arrestee in any station remove his belt, his tie, his jacket, etc. The reason for this is solid police procedure, which is followed so far as we know by good policemen throughout the nation. Its justification is to prevent arrestees from self-inflicting harm, which they can achieve of course, by hanging themselves with the belt or tie, or by having some weapon such as a knife or file stashed away in said jacket. But Wainwright conveniently leaves out of his brief the facts that at the District Station he folded his arms and told the police officers involved that if they wanted his jacket taken off of him they would have to take it off, and then according to the uncontroverted evidence presented in a Court of law in front of Mr. Wainwright and in front of Mr. Wainwright's defense attorney, Dan A. Spencer, Wainwright then proceeded to butt several of the officers from wall to wall. (A copy of the transcript of this case is annexed to and made part of this brief, Appendix B.)

Again, the City respectfully asks the Supreme Court of the United States to weigh the facts as related by Wainwright when he is writing a brief against the facts as handled by Wainwright and his defense attorney when faced by them contradictorily in a courtroom.

WAINWRIGHT WAS NEVER DENIED RIGHT TO COUNSEL AND COUNSEL WAS NEVER DENIED RIGHT TO WAINWRIGHT

Regarding Wainwright's allegations of denial of counsel, the usual pattern of contemptuous disregard for accuracy and truth is present. In support of this very strong statement by the City against both Wainwright and his attorney, the City offers the following evidence (please note: the City herein states it is offering **EVIDENCE**, not irresponsible mouthings):

1. Statements by both Wainwright and Spencer declaring that Wainwright had phoned Spencer from the police station within a half-hour after Wainwright had left the apartment shared by Wainwright and Spencer. (See Appendix C.)

Considering Wainwright had walked, by his own statement, some four blocks from home, experienced the considerable questioning at the Bourbon Street scene, the ride to the police station, the interrogation there, the "brutal beating" (also unsubstantiated in this Supreme Court or any other record by any medical evidence, even though Wainwright has had more than two years in which to furnish some), then the "disrobing", and the "illegal search" of his person, and, finally, the booking (only on Disturbing the Peace by Assaulting the police officers, and on Resisting an Officer — NOT on suspicion of anything, and **NOT** on vagrancy pending investigation of anything) — considering all these events, one half-hour's time does not strongly support Wainwright's allegation of denial of counsel.

2. The transcript of the trial of Spencer on the charges of reviling police and refusing to move on is made

part of this record (Appendix D) so it can establish, to anyone's satisfaction, that Attorney Dan A. Spencer **NEVER DID** identify himself to the police as anything other than Wainwright's "roommate and friend," never did reveal himself to be an attorney, displayed a remarkable ignorance of how to get anyone paroled or admitted to bail (matters any attorney would be expected to know), asserted repeated lack of cooperation from police officers who explained how he could get Wainwright bonded or paroled, then called an officer "that smart lieutenant" and generally abused the police until they asked him to leave. When he refused, he was arrested for reviling the police and refusing to move on (NOT for vagrancy, as Wainwright states in his petition, Page 9).

Now, the City of New Orleans does not ask anyone to accept this on argument alone; the City asks merely that one read the annexed transcript of the entire trial of Dan Arthur Spencer (annexed hereto, Affidavit No. C-80504) and judge for oneself — as a matter of fact, nothing else.

The City reasserts that, from the facts available in the transcript — facts that went uncontroverted IN THE COURTROOM by either Wainwright or Spencer — it is evident, AS MATTERS OF SHEER FACT, that Attorney Spencer deliberately concealed from the police his identity as an attorney and then alleged he was denied right to his client.

When police officers swore, under oath, that Spencer did not identify himself to them as an attorney, Spencer, face-to-face contradictorily with these officers, did NOT refute their claims, did NOT cross-examine them on this sacramental point, did not put into the record — when in a courtroom where his own veracity could have been challenged — any statement or evidence that he had ever identi-

fied himself to the police as an attorney or indeed as anything other than Wainwright's "roommate and friend."

What did Spencer do when confronted with these allegations in the courtroom?

(1). He tried to keep such testimony out of the record.

(2) He argued it is irrelevant and immaterial whether or not Spencer identified himself as an attorney.

(3) He finally — in a pitiable display of dismay and frustration — asked the trial court to take judicial cognizance that Spencer was an attorney on the date in question and that he represented Wainwright on that date. In this pathetic move, he attempted to prove by judicial notice what he could easily and properly have established by his own direct testimony or by cross-examination of the witnesses who confronted him. (Please check all these points in the annexed transcript of No. C-80504 in Appendix D.)

Despite all this, Wainwright persists in alleging denial of counsel. Do you believe Wainwright isn't familiar with Spencer's trial?

The most serious danger here, as City Prosecutor Seither pointed out in the various Louisiana forums, is that any attorney could deliberately conceal his identity as an attorney, provoke his own arrest, and then have ruled out of evidence any statements his client might make on the grounds his client was denied counsel and counsel was denied access to his client.

As a matter of fact, neither was denied access to each other in this case.

As a matter of law, this is precisely the spot in this response to argue that the authorities cited by Wainwright avail him nothing in this case at bar.

Escobedo is about denial of counsel, and Wainwright was not denied counsel, neither at the police station nor at any of the trials or other courtroom proceedings. *Mapp* and *Rios* are about search, and search does not enter into this case; Wainwright was convicted of assaulting police officers in a police station — there are no other cases before Your Honors in this appeal — and his conviction on assault was not based in the slightest on any evidence unlawfully seized nor on any statements made by Wainwright. (Wainwright was too busy telling everybody else what his rights were for him to seriously allege at this point that he was denied any rights through his ignorance of the law.)

Escobedo has always been the law in Louisiana.

Statements have never been admitted into evidence without a prior foundation established for their introduction. In laying that predicate, prosecutors have always had to establish that the statement was made or obtained entirely freely and voluntarily, that there was exerted no force, duress, threats, promises of immunity from prosecution, and the like, in return for the statements. And certainly, if defendant were denied access to counsel, that alone has repeatedly been held in Louisiana to be sufficient to rule out any statements made by that defendant. (Perhaps Mr. Wainwright will elect to dispute this and, if he does, it should be a simple thing for him to come in with cases showing the contrary — if he can find any.)

WHAT "BRUTAL BEATING"?

Wainwright alleges he was "brutally beaten" but comes in with no medical statement to even attempt to substantiate this untruthful claim.

He states, variously, that he was kneed in the groin and, rather indelicately, "in the balls" — which, if sub-

stantiated, can be pretty damaging kneeing.

But where is there the slightest scintilla of evidence to support this claim?

Wainwright has yet to produce any proof, or offer of proof.

One supposes he relies solely upon the testimony (contained in Appendix E, the transcript of abandoned proceedings in Affidavit B-80503) of Doctors Kohlman Reed and Richard M. Levy.

Dr. Reed testifies only to his findings in an examination — conducted BEFORE Wainwright was involved in the Bourbon Street arrest,— for what Wainwright calls an unsightly skin disease. Dr. Reed doesn't appear to agree it's so unsightly, but a reading of his testimony certainly rules out Dr. Reed as a witness in support of Wainwright's alleged beating.

In the same Appendix E is testimony by Dr. Levy. This is the sole "evidence" throughout this voluminous record that even hints at support of the alleged "brutal beating"—and the City submits it is rather weak support, the introduction of which Wainwright has called upon the City to effect at the City's expense. Wainwright elicited the aid of the Supreme Court of the United States to achieve this design.

This is Wainwright's appeal, of course, and the City would not cure any defects in it had the City not been ordered to do so by the Supreme Court of the United States. The City of New Orleans quite naturally expects the Supreme Court of the United States to adjust this injustice by ordering Mr. Wainwright to pay for all these

transcripts. Certainly it cannot be that, anywhere in this land, the prosecution bears the burden of perfecting an appeal designed to overthrow the very convictions the prosecution has achieved.

If there is any mention of damage to Mr. Wainwright's groin or to his scrotum — to employ a more delicate term — it escapes notice in that transcript.

Yet, Wainwright has sued seven police officers for a minimum of $100,000 each.

While Wainwright spends this school year in France (he is said to have no financial worries, and the City offers this without proof because who cares) these police officers — maximum salaries $600 per month — have to "moonlight" on extra jobs to support their families.

All this because Mr. Wainwright — in a petulant pique — deemed it too pronounced an invasion of his "rights" to merely bare his left forearm!

Here's what an assistant coroner of Orleans Parish found in an examination of Wainwright:

DEPARTMENT OF POLICE

2700 TULANE AVENUE

NEW ORLEANS, LA.

JOSEPH I. GIARRUSSO
SUPERINTENDENT

ALFRED A. THERIOT
DEPUTY CHIEF FOR ADMINISTRATION

JOSEPH A. GUILLOT
DEPUTY SUPERINTENDENT

ITEM NUMBER J-7405-64

Date Sunday Oct. 18, 1964

TO : Coroner, Parish of Orleans

FROM: Superintendent of Police

Please examine STEPHEN R. WAINWRIGHT

629 URSULINE ST. - APARTMENT 3

NEW ORLEANS, LOUISIANA

for evidence of INJURES ALLEGEDLY SUSTAINED AS THE RESULT OF BEING ARRESTED BY PERSONNEL OF THE NEW ORLEANS POLICE DEPARTMENT ON THE MORNING OF OCTOBER 13th, 1964.

Signature Frank J. Speyerer, Jr.

Rank AGENT

Bureau POLICE BUREAU OF INVESTIGATION

Case of: FRANK SPEYERER (Name) AGENT - N O P D (Rank)

ROMAINE ROUSSET (Name) CAPTAIN-N O P D (Rank) First District Commander

CORONER'S OFFICE
Parish of Orleans
Criminal Court Building
New Orleans, La.

Date October 18, 1964 Time of Examination 10:00 A. M.

Place Coroner's Office

Name Stephen R. Wainwright Sex M Race W Age 25

Address 829 Ursulines Ave.

PURPOSE OF EXAMINATION

Simple Rape ( ) Aggravated Rape ( ) Carnal Knowledge ( )

Other: Specify nature of Offense For evidence of Brutality by Police

Physical Findings:

This is a well-developed, well-nourished white male who appears to be the stated age of 25 years. He complains of pain in the right wrist, left shoulder and groin. He also complains of numbness of the right ring finger.

Physical Examination:

1. Wrist - Examination by inspection, palpation and motion reveals no objective evidence of trauma.
2. Left Shoulder - The arm is carried in a very loose low-hanging sling. Inspection of the area is negative for evidence of trauma. Palpation reveals subjective evidence of pain but no swelling, increased warmth or redness is present. The arm and shoulder can be put through all motions but there is the subjective complaint of pain.
3. Groin, penis & testicles - Examination by inspection and palpation is negative for evidence of injury or trauma.

Microscopic Slide: Vaginal Smear ( ) Other

Spermatozoa Positive ( ) Negative ( )

Other:

L. F. LoCascio, M.D.

Examining Physician Coroner Asst

Lloyd F. LoCascio, M. D.

CONCLUSION

The City submits, with respect, that the witnesses Wainwright said were left out of the record are now in the record in the various transcripts made part of this Response. The City also submits the transcript will reveal those heavily-relied-upon witnesses (a dean, a professor and an attorney of slight acquaintance with Wainwright's father) know nothing of the facts in the case, were unable to testify to any facts, and proved to be, at best, character witnesses.

In that regard, the City of New Orleans will concede that Wainwright is a person of nice (if somewhat erratic) character whom we wish success in life and the earliest possible attainment of minimal reporting skills.

But, because the City has established that Wainwright's Petition exhibits a complete lacking of basic reporting skills, the City of New Orleans respectfully repeats its early contention that Appellant Wainwright is unworthy of belief — and that his Petition for writs should be denied for that reason alone.

PRAYER — With respect, the City of New Orleans prays that the Supreme Court of the United States:

(1) Deny Petitioner's petition, and

(2) Order Petitioner to pay all costs for this appellate record which is HIS appellate record, and which appellate record is, under law, his burden, and his burden alone, to

perfect — as it is the burden of all appellants to perfect their appellate record.

Respectfully submitted,

ALVIN J. LISKA,
City Attorney,

RICHARD C. SEITHER,
Assistant City Attorney,
City Prosecutor,

Attorneys for Respondent,
Room 2W23 — City Hall,
New Orleans, Louisiana.

CERTIFICATE OF SERVICE

I certify that the above brief has been mailed to all counsel of record on this 11 day of December, 1966.

Richard C. Seither
RICHARD C. SEITHER

APPENDIX A

SUPREME COURT OF LOUISIANA

OPPOSITION BY THE CITY OF NEW ORLEANS TO AN APPLICATION FOR WRITS OF CERTIORARI, PROHIBITION AND MANDAMUS TO THE CRIMINAL DISTRICT COURT FOR THE PARISH OF ORLEANS, STATE OF LOUISIANA, IN THE CASE ENTITLED:

CITY OF NEW ORLEANS
STATE OF LOUISIANA

vs

STEPHEN R. WAINWRIGHT

No. 192-168, Section D

CRIMINAL DISTRICT COURT
PARISH OF ORLEANS
STATE OF LOUISIANA

ALVIN J. LISKA
City Attorney
and
RICHARD C. SEITHER,
Special Assistant
City Attorney
City Prosecutor
City Hall,
New Orleans, La.

TO THE HONORABLE THE JUSTICES OF THE SUPREME COURT OF LOUISIANA:

OPPOSITION TO APPLICATION FOR WRITS

NOW INTO COURT comes Alvin J. Liska, City Attorney, City of New Orleans, through Special Assistant City Attorney Richard C. Seither, the City Prosecutor, who, in opposing defendant-appellant's application for-

writs herein, most respectfully suggest that said application should be denied for the following reasons:

1. No application for a rehearing ever filed.

2. No bills of exception ever perfected.

3. No compliance with Revised Statutes 15:558 which states "an appellate court cannot consider or determine any question which was not submitted to and passed upon by the trial judge."

4. Defendant-appellant is both the attorney and the defendant in this case; and his statement of the case is a gross distortion. (E. g., what he calls a police order "to take off his clothes" on a public street was a police request to afford a glimpse of his left forearm. Defendant was advised by police that he fit the description of a man wanted for murder, that the wanted subject had a tattoo "Born to raise hell" on his left forearm; and a mere showing of his left forearm would have resolved the matter right there without incident, without arrest, without the resultant numerous trials and damage suits which defendant and his actions, conduct, demeanor, behavior and attitude have provoked. Criminal District Court Judge Thos. M. Brahney Jr. reversed a Municipal Court conviction of defendant for resisting arrest, so it could hardly be argued that he favored the city and disfavored the defendant-appellant Wainwright. Yet Brahney wrote, in his decision, that the arrest of Wainwright was legal. "The defendant had no identification on him," Judge Brahney's decision reads, "when he was stopped and he refused to remove his jacket for the purpose of identification. The defendant was belligerent and attempted to walk off on three different occasions and appeared to be using subterfuge to evade the matter. He refused to answer any questions except his name and that he was a law student. He would not

tell his place of birth or give any other information. The officers then arrested him, placed him in a police car and took the defendant to the First District Station. Under the circumstances, the arrest was legal."

Judge Brahney then cites the Estrialgo case, part of which he cited reading:

> "Bare description, presence near the scene of the felony, *suspicious or furtive conduct*, any evidence of this nature has been held to constitute probable cause to establish the identity of the felon." (People vs. Estrialgo, 37 Misc. (2) 264, 233 N.Y.S. 2nd 558.)

"Considering all of the facts and circumstances the police were justified and had reasonable cause to arrest the defendant," Judge Brahney wrote. *"The Court feels that this entire episode could have been avoided if the defendant had merely revealed his arm*, disclosing no tattoo marks and had attempted to be more cooperative."

Apparently the facts, as found in two courts of law, by Municipal Court Judge Andrew G. Bucaro and by the appellate court judge, Criminal District Court Judge Brahney, are grossly different from the facts as alleged by defendant-appellant Wainwright and by attorney Wainwright in his "Statement of the Case.")

ELABORATION ON THE CITY'S FIRST THREE POINTS

1. No application for a rehearing ever filed.

This is a sacramental failing on the part of defendant-appellant. Paragraphs 7, 8 and 9 of Section 5, Rule XII, of the Rules of Supreme Court of Louisiana make mandatory the obligation of defendant to apply for a rehearing; the language used is "MUST."

"Section 5. Each of the duplicate copies of the petition for a writ of review, under the provisions of Section 2 of Act 191 or 1898, p. 437 (R.S. 13:4450), must be verified by the affidavit of the petitioner or his attorney, and *must contain* and in order herein presented be accompanied by:

LOUISIANA SUPREME COURT RULES
RULE 12

6. A legible copy of the opinion rendered by the Court of Appeal.

7. Legible copies of the application for a rehearing and a declaration that a rehearing was applied for and refused, and a showing of the date of refusal, if a rehearing was refused.

8. A legible copy of the reasons given by the Court of Appeal for refusing a rehearing if such reasons were given.

9. A legible copy of the opinion rendered by the Court of Appeal on rehearing, if a rehearing was granted by the Court of Appeal before the case was finally decided by that Court.

10. Legible copies of all the briefs that were filed in the Court of Appeal.

Before the petition is presented to the Supreme Court, a copy of the petition must be delivered or mailed to the adverse party.

The City also includes this photostat of "Amendment of Uniform Rules, Courts of Appeal (1965)" as printed on Page 253 of the Louisiana State Bar Journal "primarily to inform members of the Bar as to the effect of the Supreme Court's recent rulings." The City begs leave of the Honorable Supreme Court to note that the City has italicized the part particularly pertinent to this argument:

AMENDMENT OF UNIFORM RULES, COURT OF APPEAL (1965)

The Uniform Rules are hereby amended to provide the following additional section to Rule XII (Remedial writs):

"Section 7. After a remedial or supervisory writ is granted, the matter shall be decided and the judgment of the court shall become final and executory in the same manner and upon the expiration of the same delays as if the case had been decided on appeal."

* * * * *

Revision Committee's Comment:

Until recently, after a remedial writ was granted, the subsequent judgment of the court of appeal was (in the absence of stay order) regarded as executory immediately and without any delay to apply for rehearing, since the judgment was rendered upon the plenary supervisory jurisdiction not under the appellate jurisdiction regulated by statute. Davis v. LeBlanc, 139 So. 2d 224 (La. App. 1962); 23 La. Law Rev. 390 (1963); 38 Tul. Law Rev. 442-443 (1964). Cf. also, with reference to the Supreme Court's power under its supervisory jurisdiction to review court of appeal judgments without regard to time limits or other limitations upon its power to review intermediate judgments under the court's appellate jurisdiction: In re Lindner, 122 La. 683, 48 So. 150 (1909); 34 Tul. Law Rev. 165, 169 (footnote 27); Reporter's Comment, Article 2201, Louisiana Code of Civil Procedure.

However, the Supreme Court has recently indicated that the exclusive remedy for review of court of appeal judgments rendered by exercise of the supervisory jurisdiction is provided by Section 11 of Article VII of the Constitution (formerly thought applicable only to review of appellate-jurisdiction judgments). Pelloat v. The Greater

New Orleans Expressway Commission, 248 La. 122, 176 So. 2d 452 (1965); Asp., Incorporated v. Capital Bank & Trust Co., 247 La. 724, 174 So. 2d 133 (1965); Joint Legislative Committee v. Fuselier, 247 La. 723, 174 So. 2d 133 (1965). If so, *the Supreme Court may not review a court of appeal judgment, even though rendered through exercise of supervisory jurisdiction, unless a rehearing has been refused by the intermediate court*, with the court of appeal judgment not becoming executory at least until expiration of the thirty-day delay allowed within which to apply for Supreme Court review. The rules change hereby adopted reflects this interpretation, and it is intended primarily to inform members of the Bar as to the effect of the Supreme Court's recent rulings.

2. No bills of exception perfected.

The City is annexing, with respect, copy of a Nov. 23, 1965 ruling by the Louisiana Supreme Court in the Ulysses Tanner case. Defense Attorneys Sam Monk Zelden and Bernard Hofton had reserved many bills during the trial but had never perfected one of them on appeal. No bills of exception have been perfected in this Wainwright case.

SUPREME COURT OF LOUISIANA

New Orleans, 70112

City of New Orleans

v.

Ulysses Tanner

November 23, 1965

No. 47,989

In re: Ulysses Tanner applying for writs of certiorari, mandamus and prohibition

---

Writs refused. No bills of exception perfected. The application as filed in this court is insufficient for our consideration of the sufficiency of the charge. See La. Code Crim. Proc. Art. 422(1), and State ex rel Contonio v. Judge, 105 La. 758, 30 So. 105, and authorities therein cited.

/s/ FWH
/s/ JBH
/s/ EHMcC
/s/ WBH
/s/ JWS
/s/ FWS

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans, March 8, 1966

/s/ Hugh St. Paul
Deputy Clerk

The City asks this Honorable Court to invoke the same law, R.S. 15:422(1) and the Cotonio case, 105 La. 758, 30 So. 105, as its basis for refusing writs in this Wainwright case.

But the City cannot ignore Mr. Wainwright's contention that the record is not complete herein. The City must first refute the written statement by Mr. Wainwright, page 5 of his application for writs herein, that:

> "In the record tendered by the City of New Orleans to Judge Brahney, Jr., of the Criminal District Court, the vital parts of the transcript were not included so that Judge Brahney had no opportunity to make a sound decision on the record."

The fact is that the Wainwright forces agreed, in a letter dated November 17, 1965 that "we will stand on the record as transcribed.

Wainwright has been represented, until these writs herein were filed by Wainwright in person as both defendant and attorney, by a Shreveport attorney named Dan A. Spencer.

On November 17, 1965 Judge Brahney wrote Spencer (see Brahney's letter annexed, and see Spencer's answering letter annexed) that "I am unable to take any action in this matter until you advise me whether or not the record, which I have in my court, is complete and accurate and that you wish to proceed on the record as is. If the record is not complete and accurate then you take whatever steps you deem necessary to see that it is made complete and accurate. I must admit that I am confused by the opening paragraph of your brief and until you clarify it further for me, I will not take any further action in this matter."

Spencer answered, in a letter strangely dated the same day, November 17, 1965 that "we will stand on the record as transcribed."

Both these letters are part of the official file in the Orleans Parish Criminal District Court.

Judge Brahney requested that the City have certified true copies made of these letters and that they be submitted to the Louisiana Supreme Court for inclusion in the record along with Wainwright's writs application. Here are those letters:

November 17, 1965.

Mr. Dan A. Spencer,
Attorney at Law,
3420 Greenwood Road,
Shreveport, Louisiana #71109.

Re: City of New Orleans versus Stephen R. Wainwright, No. 192-168

Dear Mr. Spencer:

This morning I located your brief which you referred to in your letter, in case #189-939. From the first paragraph of your brief I am unable to take any action in this matter until you advise me whether or not the record, which I have in my court, is complete and accurate and that you wish to proceed on the record as is. If the record is not complete and accurate then, you take whatever steps you deem necessary to see that it is made complete and accurate. I must admit that I am confused by the opening paragraph of your brief and, until you clarify it further for me, I will not take any further action in this matter.

For your information, the matter was argued briefly by the City this morning; however, because of these later

developments I will continue this matter as an open case until I hear from you further.

Very truly yours,

THOS. M. BRAHNEY, JR.

TB:TS

Clerk's Office 3-8 1966

A TRUE COPY

L. Altobello, Deputy Clerk,
Criminal District Court,
Parish of Orleans

DAN A. SPENCER
Attorney and Counselor at Law

Telephone
631-7469

3420 Greenwood Road
Shreveport, Louisiana
71109

November 17, 1965

Judge Thomas M. Brahney, Jr.
Criminal District Court
Section "D"
Parish of Orleans
New Orleans 19, Louisiana

Re: City of New Orleans v. Stephen R. Wainwright, No. 192-168

Dear Judge Brahney:

Thank you for your letter of November 17, 1965. My objection to the record is primarily based on the failure of the reporter to include therein my argument on the law in making certain objections and motions during the course of the trial.

It is my understanding that legal objections to a trial in Municipal Court may be supplied on appeal in the Criminal District Court. Judge Becker has previously informed me that it is not necessary to reserve bills of exception in the Municipal Court in order to preserve errors for the appeal.

I believe there are in this case errors patent on the face of this record. These are, I believe, fully covered in my brief. If your appreciation of the law is in accordance with mine, i e, that it is not necessary to reserve bills of exception, or to have the record show the legal grounds argued in support of objections and motions, we will stand on the record as transcribed.

Thank you for taking the trouble to write me about this matter. I am, with kindest regards

Yours very truly,

/s/ DAN A. SPENCER
Dan A. Spencer

DAS/jcd

Clerk's Office 3-8 1966

A TRUE COPY

L. Altobello, Deputy Clerk,
Criminal District Court,
Parish of Orleans

3. No compliance with R.S. 15:558, which reads:

> "Unless the error is patent on the face of the record, an appellate court can not consider or determine any question which was not submitted to and passed upon by the trial judge."

The City submits that this article means, simply, any judge has the right to pass on a matter before he can be reversed on it.

That's the reason it's so important for bills of exception to be perfected; part of that perfection is the judge's per curiam to those of his rulings to which the objections lie. That's the reason for the necessity of a motion for a rehearing; so there will be in the record on appeal just what the positions of the parties and of the judge are.

For the four reasons set forth by the City, and elaborated upon by the City, it is most respectfully requested that Wainwright's application for writs be refused.

/s/ ALVIN J. LISKA
ALVIN J. LISKA
City Attorney

/s/ RICHARD C. SEITHER
RICHARD C. SEITHER
City Prosecutor

STATE OF LOUISIANA:

PARISH OF ORLEANS:

BEFORE ME, the undersigned authority, personally came and appeared:

ALVIN J. LISKA

and

RICHARD C. SEITHER

who, being first by me duly sworn, did depose and say that they have read all of the foregoing opposition to writs, that it is all true and correct, and that two copies have been mailed to the defendant-appellant, Stephen R. Wainwright.

/s/ ALVIN J. LISKA
ALVIN J. LISKA

/s/ RICHARD C. SEITHER
RICHARD C. SEITHER

Sworn to and subscribed before me
this 22nd day of March, 1966.

/s/ WM. BOYELLE, N. P.
NOTARY PUBLIC

MUNICIPAL COURTS

OF NEW ORLEANS

501 N. RAMPART STREET

NEW ORLEANS, LA. 70116

W. BLAIR LANCASTER, JR., JUDGE,
FIRST MUNICIPAL COURT

ANDREW G. BUCARO, JUDGE,
SECOND MUNICIPAL COURT

JOSEPH R. BOSSETTA, JUDGE,
THIRD MUNICIPAL COURT

EDWIN A. BABYLON, JUDGE,
NIGHT MUNICIPAL COURT

ARTHUR J. BOE,
CLERK, MUNICIPAL COURTS.

August 6,1965

Mr. Edward A. Haggerty, Clerk
Criminal District Court
Tulane Avenue and Broad Street
New Orleans, Louisiana

Re: City of New Orleans vs. Stephen Wainwright - No. 83469-A, et al.

Dear Sir:

Attached hereto is transcript of testimony in connection with the above matter:

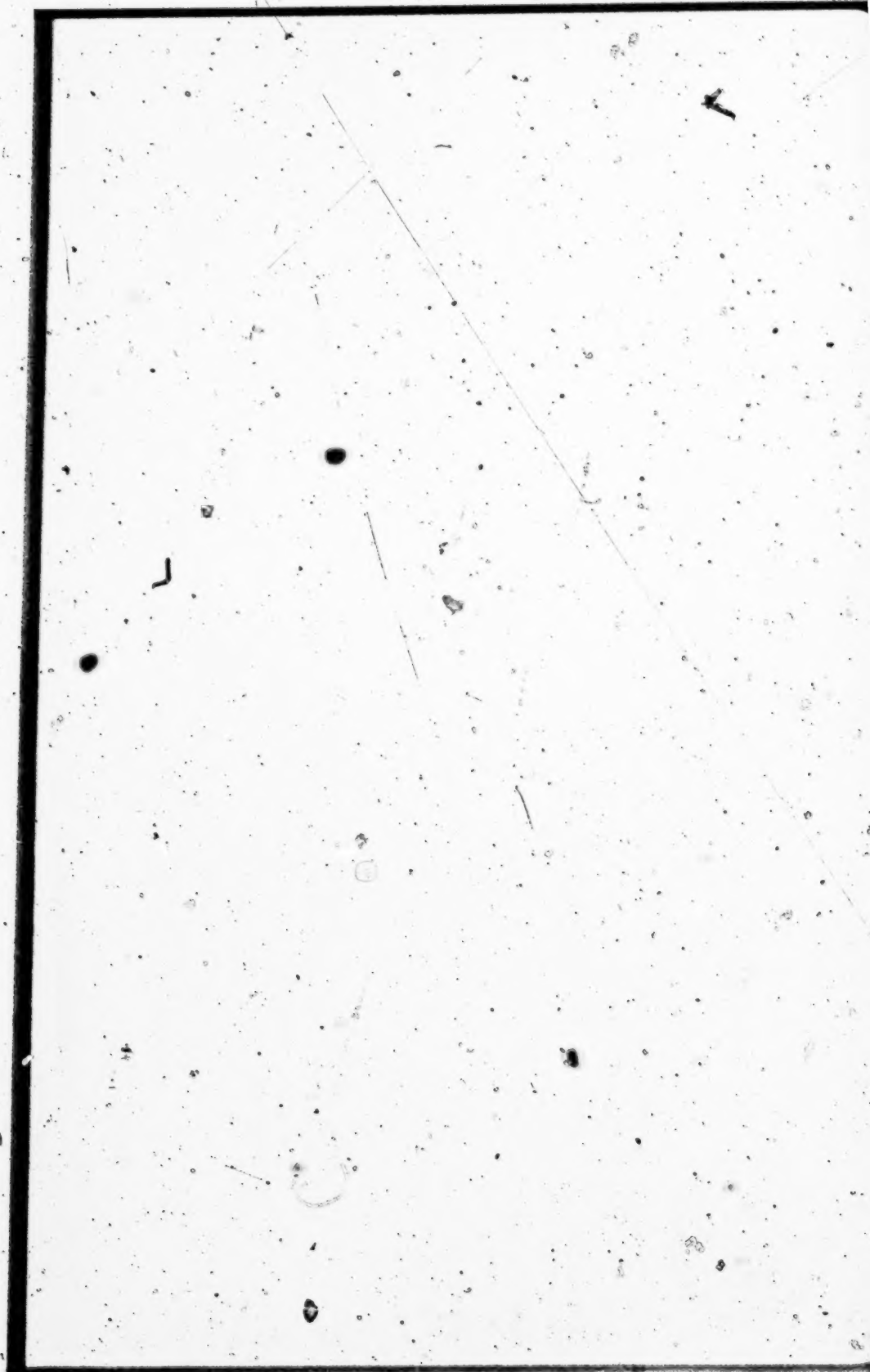
I N D E X

Testimony	Pages 1 thru 43
Affidavits	Pages 44 thru 46
Appearance Bail Bond	Page 47
Motion for Appeal	Page 48
Appeal Bail Bond	Page 49
Ordinance No.828 MCS, Sections 49-2 and 42-24	Pages 50 thru 51

Very truly yours,

ARTHUR J. BOE,
CLERK.

AJB/gh
encls.
RECEIPT IS ACKNOWLEDGED:
DATE:_____
BY:_____
EVIDENCE: 1- copy of letter dated July 7,1965 addressed to Clerk, Municipal Court, 500 N.Rampart St., New Orleans, La. by Dan A. Spencer - Case No. 80503-B.



NO. 83469-A

CHARGES

VIOLATION OF ORDINANCE NO. 828 M.C.S., SECTION 49-2, RELATIVE TO RESISTING AN OFFICER, SECTION 42-24, RELATIVE TO DISTURBING THE PEACE BY ASSAULT ON PATN. GEORGE O'ROURKE, AND SECTION 42-24, DISTURBING THE PEACE BY ASSAULT ON PATN. FRANK GILFORD.

CITY OF NEW ORLEANS
VERSUS
STEPHEN R. WAINWRIGHT

TRANSCRIPT OF TESTIMONY AND NOTES OF EVIDENCE IN THE ABOVE NUMBERED AND ENTITLED CAUSE, THE SAME BEING TAKEN IN OPEN COURT ON THE 16TH. DAY OF JULY, 1965,

BEFORE THE HONORABLE,
ANDREW G. BUCARO, JUDGE,
FIRST MUNICIPAL COURT,

ON BEHALF OF THE CITY AND THE ACCUSED:

PRESENT IN COURT: (10:45 O'CLOCK A.M.)

1. MR. STEPHEN R. WAINWRIGHT, DEFENDANT, 36 South Street, Brockton, Massachusetts, represented by MR. DAN A. SPENCER, Attorney at Law, 3420 Greenwood Drive, Shreveport, Louisiana.

THE FOLLOWING WITNESSES FOR THE CITY OF NEW ORLEANS:

2. LT. F. MARTELLO,
3. PATN. E. BOEPPLE,
4. PATN. J. OTTESEN,
5. DET. D. KENT,
6. DET R. TOWNSEND,
7. PATN. G. O'ROURKE,
8. PATN. F. GILFORD.

PRESENT IN COURT: (11:20 O'CLOCK A.M.)

9. MR. J. B. KIEFER, Attorney at Law, National Bank of Commerce Building, New Orleans, La., representing the City of New Orleans.

REPORTED BY: Gerry Heaton, Stenographer.

COURT:

Mr. Kiefer telephoned the Court to say he was occupied in the District Court of Jefferson Parish, which is a Court of superior jurisdiction. Contacted his office twice, and Mr. Kiefer is not available for our telephone calls and has not replied. At this time I would like to state that all City witnesses that are listed on the affidavits, Lt. F. Martello, Patn. E. Boepple, Patn. J. Ottesen, Det. D. Kent, Det. R. Townsend, Patn. G. O'Rourke, and Patn. F. Gilford are all present in Court today.

Defendant is also present in Court. His attorney is present in Court. However, the City Attorney has informed the Court, through his office, that he is involved in a matter in the District Court of Jefferson Parish. Let the record show that the following City witnesses are all present in Court at this time:

1. Lt. F. Martello
2. Patn. E. Boepple
3. Patn. J. Ottesen
4. Det. D. Kent
5. Det. R. Townsend
6. Patn. G. O'Rourke
7. Patn. F. Gilford

however the City Attorney is not available and therefore the matter is going to be re-set.

ATTORNEY DAN A. SPENCER:

Mr. Wainwright has traveled a distance of seventeen hundred miles. I traveled three hundred miles to be here today. I would like to go to trial if at all possible.

COURT:

This is the information we have received from Mr. Kiefer's office, and we have made two attempts to contact him.

ATTORNEY DAN A. SPENCER:

I am asking leave to file copies of letters written on July 7, 1965 to the Clerk of the Municipal Court, 500 N. Rampart Street, New Orleans, La., a copy of which was sent to Honorable Judge Bucaro, Municipal Court, Section B, 500 North Rampart St., New Orleans, La.; to Honorable Judge, Municipal Court, Section A, 500 North Rampart St., New Orleans, La., and a copy to my client Mr. Stephen R. Wainwright, 36 South St., Brockton, Massachusetts, and I now file in evidence this copy of letter requesting to be notified if the case was to be held today, in view of the fact that defendant was travelling from Massachusetts, and his attorney from Shreveport, Louisiana to be present today.

COURT:

Let the record reveal all parties served, however, the City is not prepared because of the fact that Mr. Kiefer is in a Court of superior jurisdiction. That is the information received from his office. The Court is ready, willing and able to hear the matter.

ATTORNEY DAN A. SPENCER:

I move that the case be dismissed for non-prosecution by the City.

COURT:

Motion is denied. Anything else you want Mr. Spencer.

ATTORNEY DAN A. SPENCER:

No, sir.

11:20 O'CLOCK A.M. — JULY 16, 1965

COURT:

Let the record indicate that the Court is now back in session to accommodate defendant and his attorney.

COURT TO DEFENDANT STEPHEN R. WAINWRIGHT:

Q. Are you uncomfortable standing?

A. No, but if I would have to do it for a long period of time I would be very uncomfortable.

COURT:

Let the record show the Court, since contacted by Mr. Kiefer, was certain he had notice of this matter, but information received from Mr. Kiefer is he didn't receive timely notice, and he was since notified by telephone.

ATTORNEY J. B. KIEFER, REPRESENTING THE CITY OF NEW ORLEANS:

While I was present at the time of the arraignment, the cases had not been allotted, and that when they were allotted these cases were set for trial in the division to which they were allotted, and that this is an additional reason today, that I had absolutely no notice of the date upon which these matters were set for trial.

COURT:

Are you prepared for trial Mr. Kiefer?

ATTORNEY J. B. KIEFER:

I am not prepared for trial because I didn't know the matter was set for today.

COURT:

I would prefer granting it to you but I think I will not.

ATTORNEY DAN A. SPENCER:

I move that the defendant be allowed to sit down because he has a bad back.

STEPHEN R. WAINWRIGHT, DEFENDANT, BEING DULY SWORN, TESTIFIED:

ATTORNEY DAN A. SPENCER TO STEPHEN R. WAINWRIGHT:

Q. State your name.

A. Stephen R. Wainwright.

Q. You have a physical disability?

A. I have a bad back.

Q. Any other physical disability?

A. I am presently under treatment for blood ulcers.

Q. Any further questions?

ATTORNEY J. B. KIEFER:

I have no objection.

COURT:

Have a seat Mr. Wainwright.

ATTORNEY J. B. KIEFER:

I would like the witnesses to be sequestered. I would like to call Lt. F. Martello.

ATTORNEY DAN A. SPENCER:

I would like the City witnesses not to discuss the case amongst themselves until the matter is concluded.

COURT:

Call them back. (Witnesses enter Court) The Attorney for Defendant has requested that I instruct you not to discuss this matter, and you are so instructed.

LT. FRANCIS MARTELLO, BEING DULY SWORN, TESTIFIED:

ATTORNEY J. B. KIEFER TO LT. FRANCIS MARTELLO:

Q. State your name please.

A. Lt. Francis L. Martello.

Q. You are a member of the New Orleans Police Department, so employed on Friday, October 13, 1964, at approximately one o'clock A.M.?

ATTORNEY DAN A. SPENCER:

I object.

COURT:

Answer the question.

A. Yes.

ATTORNEY J. B. KIEFER TO LT. FRANCIS MARTELLO:

Q. Do you recognize defendant in Court?

A. Yes.

Q. Where is he?

A. Sitting in the first seat of the first row.

Q. Please tell the Court when you first saw him on or before the date of October 13th., 1965. I wish at this time to amend the record to reflect 1964 instead of 1965.

COURT:

Hand me the record and I will amend it to read 1964. The Court feels that this is a typographical error.

ATTORNEY J. B. KIEFER TO LT. FRANCIS MARTELLO:

Q. In that regard it is your testimony you were so employed by the New Orleans Police Department on the 13th. day of Friday, October, 1964?

A. Yes.

Q. Please tell the Court when, on, or before that date you first saw the defendant and where?

A. I saw the defendant in the First District Station.

Q. When you first saw him?

A. In the First District Station.

Q. That was the first time you had seen him that day?

A. Yes.

Q. You hadn't seen him before you came to the First District Station?

A. Correct.

Q. In what capacity were you serving in the First District Station?

A. Lieutenant on platoon.

Q. Under what circumstances did you see him in the First District Station?

A. He was under arrest.

Q. Do you recall the arresting officers?

A. Yes. Officer Boepple and Officer Ottesen.

Q. Please tell the Court what you observed at that date and time.

A. He was under arrest by Officer Boepple and Officer Ottesen. He was placed in the booking cage, and he was booked, and I had asked him to remove his jacket, which is part of the booking procedure, which is outlined in the manual of the New Orleans Police Department.

Mr. Wainwright refused to take his jacket off. I explained all prisoners must be thoroughly searched and he should cooperate with us by removing his jacket for identification purposes, and also for any weapons, which a person may have on him at the time he is booked for the security of the prisoner and the Police Officer.

He again refused to take his jacket off, so I instructed him I would have the jacket removed by the doorman.

He again refused. He walked into a corner grabbed his jacket by his hands, folding his arms, and he said, "If you want this jacket off take it off".

Q. Please show the Court just what you mean.

A. (Lt. Martello demonstrates). He went into the corner crouched down, and he said, "If you want this jacket off take it off". I instructed Officer Gilford and Officer O'Rourke to remove his jacket.

Q. Did he give you any reason why he didn't want his jacket removed?

A. He said that he was a law student. He knew the law and he didn't want the jacket off.

Q. Proceed.

A. Officer O'Rourke and Officer Gilford asked him to take the jacket off and he didn't respond, so they physically took the jacket off of him. He done everything in his power to keep them from removing the jacket. In this operation the officers were bounced from wall to wall physically, and with the assistance of a couple of other police officers they put handcuffs on one of his arms, and they removed his jacket.

Q. No other questions at this time.

ATTORNEY DAN A. SPENCER TO LT. FRANCIS MARTELLO:

Q. Lt. Martello, how did you know the defendant was under arrest?

A. The officers told me he was under arrest.

Q. That is the only knowledge you had?

A. Yes, correct.

Q. Were you present when he was brought into the First District Station?

A. I was not present when he was brought in.

Q. Do you know how long he had been in there before you came in?

A. A very short while.

Q. Where was he in the Police Station when you first saw him?

A. In the Desk Sergeant's Room.

Q. That is behind the cage as one walks into the station?

A. No. Behind the cage there is a Desk Sergeant's booking area or cage, in the rear of that is a booking area. There is a walk-way, to the right is the Captain's room and to the left * * *

Q. This is a separate office?

A. Separate office.

Q. It is common practice to take a prisoner into the Desk Sergeant's office?

A. It is. Yes. It depends on what he is charged with.

Q. A person charged with vagrancy, it is a common practice to take such a person into the Desk Sergeant's office?

ATTORNEY J. B. KIEFER:

I object.

COURT:

Let's hear him answer it.

LT. FRANCIS MARTELLO:

A. It depends on the case. As a general rule more people are brought into the Desk Sergeant's area depending on what they are charged with. Traffic violations, no. If you want to question a person, yes.

ATTORNEY DAN A SPENCER TO LT. FRANCIS MARTELLO:

Q. For what purpose was the defendant taken into the Desk Sergeant's office?

A. I wasn't present. I assume it was to question him.

Q. When you walked in was he being questioned?

A. I couldn't hear if he was. I wouldn't know if he was or not.

Q. Was he talking to someone when you came in?
A. When I walked into the station the officer came up to me and spoke to me.

Q. With regard to Mr. Wainwright?
A. That is correct.

Q. What did he say to you?
A. He had Mr. Wainwright under arrest.

Q. Did he say anything else?
A. Yes, he did.

Q. What did he say?
A. He stated * * *

ATTORNEY J. B. KIEFER:
I object until he is identified.

COURT:
Who is the officer?

LT. FRANCIS MARTELLO:
A. Officer Boepple.

ATTORNEY DAN A. SPENCER TO LT. FRANCIS MARTELLO:
Q. What did he say to you?

ATTORNEY J. B. KIEFER:
I object. Officer Boepple is here and can testify as to what he said.

COURT:
Answer the question Lt. Martello.

LT. FRANCIS MARTELLO:
A. He said he had subject under arrest. He fit the general description of a subject who was wanted for murder. Also, the subject who was wanted for murder had a tattoo on his left arm "born to raise hell".

He showed me a composite or drawing of one Johnnie McTaylor. He said that this man

would not answer any questions concerning this investigation. He had asked this man on the scene to remove his jacket for the purpose of identification. This man was informed that he fitted the general description of a man wanted as a suspect in a murder case. This arrested subject had no identification on him whatsoever, was very belligerent; he attempted to walk off on three different occasions, and was possibly using subterfuge to evade the matter.

Q. Anything else?

A. I asked him to remove his jacket.

Q. This was in the Desk Sergeant's office?

A. Yes.

Q. What did he say then?

A. He demanded the right to use the telephone. He said he wasn't going to remove his jacket. I told him he has a right to use the 'phone. I said all right, we will book you first. He wanted to use the telephone. I told him you have to be booked before you can use the telephone. I told him he had to be searched before he could use the telephone. This is what he objected to.

Q. Do you know what the term frisk a prisoner means?

A. Generally on the street where you pat a person down for obvious weapons.

Q. Did you frisk the defendant in the police station?

A. No.

Q. Did anyone else in your presence frisk him?

A. No.

Q. Do you know if Officer Boepple had frisked him prior to bringing him into the station?

A. No.

Q. Is it customary police procedure to do so?
A. Yes.

Q. You assume they had done so?
A. Yes.

Q. Does frisking a defendant reveal whether or not he has weapons on him?

ATTORNEY J. B. KIEFER:

I object.

COURT:

Sustained.

ATTORNEY DAN A. SPENCER TO LT. FRANCIS MARTELLO:

Q. Describe the jacket Mr. Wainwright had on.
A. I believe it was a real light weight jacket.

Q. Very thin?
A. Yes, very thin.

Q. Do you know what he had on under it?
A. Not at that time, but after we took the jacket off we did.

Q. What did he have on under it?
A. A T-shirt.

Q. It wasn't possible for you to determine whether or not he had any weapons on him without taking the jacket off?
A. No, sir.

Q. Do you take a person's pants off to search for weapons?
A. It depends on the case.

Q. How about vagrancy?
A. Yes, depending on the case.

Q. Always?
A. Not always.

Q. How many times in the last two weeks have you seen members of the New Orleans Police Department remove trousers to see if a person had weapons on him?

A. (No answer)

Q. Did you ask Mr. Wainwright to remove his trousers?

A. No, sir. No need to.

Q. Why no need to?

A. He was thoroughly searched by the competent doorman we have. I was satisfied.

COURT:

Were you searching for weapons or marks?

LT. FRANCIS MARTELLO:

A. To determine whether or not he had a mark on his arm.

COURT:

Are "shakedown" and "frisk" related?

LT. FRANCIS MARTELLO:

A. Generally speaking "shakedown" means frisk. Sometimes it is used to search a prisoner. It depends on the Officer.

ATTORNEY DAN A. SPENCER TO LT. FRANCIS MARTELLO:

Q. You refused to allow Mr. Wainwright to use the telephone until his jacket had been ripped from him?

A. No I didn't refuse him; he had to be booked and searched.

Q. You didn't allow him to use the telephone?

A. He didn't make an issue of it.

Q. He did ask to use the telephone before he was searched?

A. Yes. I told him no he had to be booked and searched first.

Q. Is it customary police procedure to do so?
A. Yes.

Q. You assume they had done so?
A. Yes.

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A. (No answer)

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Q. You didn't allow him to use the telephone?

A. He didn't make an issue of it.

Q. He did ask to use the telephone before he was searched?

A. Yes. I told him no he had to be booked and searched first.

Q. You refused him to use the telephone?

A. He used the telephone after he was searched.

Q. You refused to allow him before he was searched?

A. No.

Q. You testified that Mr. Wainwright crouched in a corner, held his jacket to him, now what did he do when Officers O'Rourke and Gilford tried to remove it?

A. He tried to keep it on by holding it.

Q. How?

A. By folding his arms. (demonstrates)

Q. He didn't do anything else?

A. No, not to my knowledge.

Q. If Officer O'Rourke and Officer Gilford got thrown around the room, it was through their own effort?

A. No, it was the combined effort of Mr. Wainwright in his refusal to remove the jacket. Force was necessary to remove the jacket by the officers.

Q. He didn't do anything but try to hold the jacket on?

A. They tried to take it off, and he was trying to keep the jacket on.

Q. He held very still?

A. No, it was a struggle.

Q. Did he strike out at the officers?

A. No.

Q. Did he kick the officers?

A. I didn't see him. He could have. I didn't see him. It wasn't visible to me.

Q. How many officers were involved in an attempt to take his jacket off of him?

A. Officer Gilford, Officer O'Rourke, Officer Wilson and Mr. Kent — four.

Q. Lt. Martello, when you first entered the police station you were informed by the officer present that Mr. Wainwright refused to answer questions regarding this murder investigation?

ATTORNEY J. B. KIEFER:

I object.

COURT:

Permit the question.

ATTORNEY DAN A. SPENCER TO LT. FRANCIS MARTELLO:

Q. When you first walked into the police station and was informed by the officer that Mr. Wainwright refused to answer questions regarding this murder investigation, didn't you say "Take that dirty S.O.B. in the interrogation room and take that jacket off of him"?

A. No.

Q. Did you say anything of the kind?

A. No.

Q. Did they take the jacket off of Mr. Wainwright on your command?

A. My sole command.

Q. Did you not curse Mr. Wainwright in the police station?

A. No.

Q. Was Mr. Wainwright asked if he wanted to call an attorney before he was searched?

A. No. He wanted to use the telephone.

Q. Did you assist the officers in taking his jacket off?

A. No, but I ordered it.

Q. You didn't touch him yourself?

A. No.

Q. What were the names of the other officers besides O'Rourke and Gilford?

A. Officer Kent and Officer Townsend, I believe.

Q. How about Officer Boepple?

A. He was on the outside; so was Officer Ottesen, I believe. I am not sure. I could be wrong.

Q. Five of them?

A. Four or five. I am not positive.

Q. Did you see them strike Mr. Wainwright?

A. No.

Q. Did you see any of them knee him?

A. No.

Q. Did you see any of them twist his arm behind a bar?

A. No. What kind of a bar?

Q. A steel bar?

A. No steel bars in the First District. They had a handcuff on his arm. I don't know whether they twisted it or not. They could have.

COURT:

If they had twisted his arm, was there reason to?

LT. FRANCIS MARTELLO:

If they did it was logical in my opinion.

ATTORNEY DAN A. SPENCER TO LT. FRANCIS MARTELLO:

Q. Lt. Martello you testified that the primary purpose for removal of the jacket was for identification purposes, was that correct?

A. Correct.

Q. How did you plan to identify him by the tattoo?

A. Correct.

Q. On what part of his body?

A. Left forearm.

Q. Were there any members of the New Orleans Police Department who, to your knowledge, could have identified this murder suspect had they seen him?

A. No. Not by sight but by investigation. In the line of investigation.

Q. How are composites drawn up, Lt. Martello?

A. By a specialist in the Police Department, who is a technician that we have, who interviews various witnesses and suspects and from their words he draws a picture or photograph.

Q. Do you know if the murder suspect had ever been arrested in New Orleans before?

A. Which one?

Q. The one you mistakingly identified Mr. Wainwright as?

A. It has never been clarified whether the man we were looking for as the murder suspect, is the man who committed the murder. It is still an open case.

Q. Lt. Martello, what was the name of the person you took Mr. Wainwright for?

A. Johnnie McTaylor.

Q. Has he ever been arrested by the New Orleans Police Department before?

A. I don't know.

Q. Lt. Martello, is it not true that two police officers who could identify Johnnie McTaylor were on their way to the Police Station at the time you ripped the clothing off Mr. Wainwright?

A. I didn't rip the clothing off of him. I didn't know if these officers had specific knowledge they could identify him.

Q. Is it not true that these two officers were on

their way to the station at the time?

A. I had no knowledge of this.

Q. Did you later learn that two such officers were on their way to the Police Station?

COURT:

The Court will rule the question is irrelevant and the Officer need not answer it?

ATTORNEY DAN A. SPENCER TO LT. FRANCIS MARTELLO:

Q. Lt. Martello did two officers, who could have identified the murder suspect, come to the First District Police Station on the night Mr. Wainwright was arrested?

A. Two police officers from homicide who came to the First District Station — what knowledge they had, I don't know.

Q. You don't know whether or not they came there to identify Mr. Wainwright or not?

A. They were at the station. They were assigned to this case. Whether they could, or could not identify Mr. Wainwright as one Johnnie McTaylor I don't know.

COURT:

All information is in the record on the previous question. No objection by the City and the City permitted this information in the record later.

ATTORNEY DAN A. SPENCER TO LT. FRANCIS MARTELLO:

Q. Lt. Martello, before Mr. Wainwright's clothes were torn off of him, did any officer, Officer Boepple, or any one else, tell you they had called and some one was coming over to identify the defendant?

A. (No answer)

Q. No further questions.

ATTORNEY J. B. KIEFER TO LT. FRANCIS MARTELLO:

Q. The First District, which is located at Basin and St. Louis Streets, is that in the City of New Orleans?

A. Yes. 501 N. Rampart.

Q. How long have you been with the New Orleans Police Department?

A. I am in my seventeenth year.

Q. Describe to the Court the conduct of the defendant at the time of the incident?

ATTORNEY DAN A. SPENCER:

I object. This has already been covered.

COURT:

This has been covered. Lt. Martello the officers who removed the jacket from Mr. Wainwright subsequent to what you called a struggle, did any of them have marks, bruises, or torn clothing?

LT. FRANCIS MARTELLO:

No.

ATTORNEY DAN A. SPENCER TO LT. FRANCIS MARTELLO:

Q. Lt. Martello, why didn't you file an affidavit against Mr. Wainwright for assault prior to May 14th. of this year?

ATTORNEY J. B. KIEFER:

I object. The Office of the City Attorney . . .

COURT:

Sustained.

OFFICER GEORGE O'ROURKE BEING FIRST DULY SWORN, TESTIFIED:

ATTORNEY J. B. KIEFER TO OFFICER GEORGE O'ROURKE:

Q. State your name.

A. George O'Rourke.

Q. Are you a member of the New Orleans Police Department and so employed on Friday, October 13, 1964, at approximately 1:25 AM?

A. Yes.

Q. Where were you serving at that time?

A. Doorman at the First District.

Q. In that capacity did you have any occasion to see the defendant? Do you recognize Stephen R. Wainwright?

A. Yes.

Q. Where is he?

A. That is Mr. Wainwright. (Pointing) That is Mr. Spencer. (Pointing)

Q. Mr. Wainwright is seated in the first row?

A. Yes.

Q. Do you recall the incident, which occurred at the First District Station on that date and time?

A. Yes.

Q. Did it involve the defendant?

A. Yes.

Q. Please tell the Court what occurred?

A. Mr. Wainwright was put behind the booking cage, and he was placed on the books with charges that the officers placed upon him. After the charges were placed, he was asked to remove a jacket he had on. The officers wanted to see if he had a tattoo on his arm.

He was picked up as a suspect that may have been wanted for murder.

Mr. Wainwright put his arms over his chest and backed up into a corner. Lt. Martello asked him to take the jacket off, and he just looked at us. He was asked again. He said, "If you want this jacket you will have to take it off."

We approached Mr. Wainwright, Officer Gilford and myself. Officer Gilford to the left, and I am on the right. We got hold of each of his arms. We tried to pry his arms apart, and in the meantime we were bounced from wall to wall and bench to bench and back again.

COURT:

Demonstrate.

OFFICER GEORGE O'ROURKE:

Well I tried to get one arm and Gilford the other. Mr. Wainwright when I tried to get his right arm, would rush me to the side, and when Gilford tried to get the left arm, he would push him to the side. We went back and forth.

COURT:

What is your weight Officer O'Rourke?

OFFICER GEORGE O'ROURKE:

At that time about one hundred and eighty pounds.

COURT:

What is your age?

OFFICER GEORGE O'ROURKE:

Forty-four.

COURT:

The Court observed Mr. O'Rourke. He has a little stomach but mostly brawn or muscle.

ATTORNEY J. B. KIEFER TO OFFICER GEORGE O'ROURKE:

Q. Who told you to remove this jacket?

A. Lt. Martello.

Q. Did you remove the jacket?

A. Yes.

Q. Were you injured in any way?

A. No. A little soreness, here and there.

Q. No further questions.

ATTORNEY DAN A. SPENCER TO OFFICER GEORGE O'ROURKE:

Q. Mr. O'Rourke, were you present when Mr. Wainwright was brought into the Station?

A. Yes.

Q. Where were you?

A. Behind the booking cage.

Q. Was Lt. Martello there then?

A. I cannot recall if he was in the area at the time. We sit back there to catch up on the Manual or any other items we have to read up on.

Q. What took place immediately upon Mr. Wainwright's being brought in? What did the officers do with him when they brought him in?

A. I don't know.

Q. You were there?

A. In the booking cage.

Q. Did you see them bring him in?

A. No.

Q. When did you see him first?

A. When he was brought from the Interrogation Room to be brought to the Booking Room.

Q. He had been in the Interrogation Room?

A. I assume.

Q. Did you hear Mr. Wainwright ask to use the telephone?

A. Yes.

Q. When was this?

A. After he was booked and put up a struggle to get his jacket off.

Q. He didn't ask to use it before his jacket was removed?

A. No.

Q. When he was brought up to be booked, did he ask to use the telephone?

A. No, sir.

Q. After he was booked and before the jacket was removed, did he ask to use the telephone?

A. No, sir.

Q. Did he ever ask to see a lawyer?

A. No, sir.

Q. How many officers did it take to get his jacket off?

A. Three of us. Two of us and when we got his right hand away from his chest, I asked for handcuffs. Officer Kent gave them to me.

Q. Other than that no one else assisted you?

A. Yes, Officer Gilford.

Q. Were other officers present besides Officer Gilford and yourself?

A. No, sir. Officer Gilford and myself and during the struggle Officer Kent came to our assistance.

COURT TO OFFICER GEORGE O'ROURKE:

Q. The booking cage and the interrogation office are two separate rooms?

A. Yes.

Q. Could you be in the interrogation office talking

to some one and some one in the booking cage not know you were in there?

A. Yes.

Q. Completely separate?

A. Yes.

Q. Closed door?

A. Yes.

ATTORNEY DAN A. SPENCER TO OFFICER GEORGE O'ROURKE:

Q. What did Officer Kent do?

A. Helped Officer Gilford restrain Mr. Wainwright from further pushing us against the wall while the handcuffs were put on Mr. Wainwright.

Q. How was he pushing you around? Did he strike out at someone?

A. No. Like a football player going through a line.

Q. Did he try to run?

A. No, dancing from wall to wall.

Q. Did he do that because each of you were pulling on his arms?

A. He was trying to keep us from getting his arms.

Q. You pulled one way; Officer Gilford the other?

A. Yes, trying to get his arms apart.

Q. Immediately after you took his jacket off what happened?

A. His right arm was removed from the jacket and a handcuff put on. Left arm removed and he was handcuffed. He calmed down; then he was asked to use the 'phone. The handcuff was removed from his left arm and he was allowed to use the 'phone and rehandcuffed and brought to F.B.I. for processing.

Q. Were you standing next to him when he used the telephone?

A. I was standing by him.

Q. He was handcuffed to you?

A. No, I was holding the handcuff.

Q. Did he finish using the telephone?

A. Yes.

Q. Officer O'Rourke did you hang the 'phone up or did Mr. Wainwright?

A. Mr. Wainwright.

Q. Did you curse Mr. Wainwright?

A. No.

Q. Did you strike Mr. Wainwright?

A. No.

Q. You didn't strike him between the legs with your knee, did you?

A. No.

COURT:

Why didn't you strike him?

OFFICER GEORGE O'ROURKE:

A. We were trying to subdue the man, to keep from hurting him and getting ourselves hurt, as we had to get the jacket off.

ATTORNEY DAN A. SPENCER TO OFFICER GEORGE O'ROURKE:

Q. You didn't see Mr. Wainwright when he was first brought into the Police Station?

A. No.

ATTORNEY J. B. KIEFER TO OFFICER GEORGE O'ROURKE:

Q. Your testimony has been that you didn't know how long Mr. Wainwright was in the station before he was brought before you, is that correct?

A. Yes.

Q. Therefore, you wouldn't know whether or not he had made a request of someone else to use the telephone other than yourself, before he was brought to you, is that correct?

A. Yes. If he asked someone else I had no knowledge of it.

Q. To clarify your testimony, he made no request to use the telephone until after the incident, that is only insofar as in your presence, right?

A. Right.

Q. You don't know what requests, if any, were made by Mr. Wainwright before he was brought before you?

A. That is right.

Q. Do you know in what capacity Officer Kent serves?

A. Assigned to the Detective Bureau.

Q. Do you know for what purpose he was there?

A. No, sir, I had no idea.

Q. No other questions.

ATTORNEY DAN A. SPENCER TO OFFICER GEORGE O'ROURKE:

Q. Immediately after Mr. Wainwright was brought out of the Interrogation Room were you standing next to Lt. Martello?

A. No, sir I was in the booking cage.

Q. Where was the Lieutenant?

A. I cannot say.

Q. Was he there?

A. I presume he was.

Q. You don't know he was?

A. No. Where at?

Q. How long after Mr. Wainwright was brought out of the Interrogation Room into the booking

cage, did you notice Lt. Martello's presence?

A. When they proceeded to book Mr. Wainwright.

ATTORNEY DAN A. SPENCER:

I move for a directed verdict.

COURT:

Denied.

OFFICER E. BOEPPLE CALLED BY DEFENSE:

OFFICER E. BOEPPLE BEING DULY SWORN, TESTIFIED:

ATTORNEY DAN A. SPENCER: TO OFFICER BOEPPLE:

Q. Officer Boepple, do you know the defendant in this case, Stephen Wainwright?

A. Yes, I do.

ATTORNEY J. B. KIEFER:

I object.

COURT:

Under what circumstances do you know Stephen Wainwright, Officer Boepple?

OFFICER E. BOEPPLE:

I arrested the subject.

ATTORNEY DAN A. SPENCER TO OFFICER E. BOEPPLE:

Q. When did you arrest the subject?

A. October 13, 1964.

Q. After the arrest did you take him to the First District Police Station?

A. I did.

Q. Did he ask you immediately upon be taken to the Police Station, to use the telephone to contact an attorney?

A. He asked me when he would be allowed to use the telephone.

Q. What did you tell him?

A. As soon as his name was on the book.

Q. What did you do with him as soon as you brought him to the Police Station?

A. Kept him in the Interrogation Room for a period of approximately seven to ten minutes.

Q. Was anyone else being booked at the time?

A. I think there were other prisoners there. I don't know for sure.

Q. Any reason he wasn't booked immediately?

A. I was awaiting arrival of two homicide officers, who I assume would be connected with the matter eventually. I wanted to await their arrival.

Q. You suspected him of being a suspect in a murder case?

A. Correct.

Q. These two officers could have identified that murder suspect, is that correct?

ATTORNEY J. B. KIEFER:

I object.

COURT:

Sustained.

ATTORNEY DAN A. SPENCER TO OFFICER E. BOEPPLE:

Q. You didn't allow Mr. Wainwright to use the telephone until some ten or fifteen minutes after he was brought into the station?

ATTORNEY J. B. KIEFER:

I object.

COURT:

Sustained. This is a defense witness not a City witness.

ATTORNEY DAN A. SPENCER TO OFFICER E. BOEPPLE:

Q. How long did you keep Mr. Wainwright in interrogation before being brought out to be booked?

A. Seven to ten minutes.

Q. Why was he brought out to be booked at the time?

A. Orders of Lt. Martello.

Q. In what manner did he give these orders? What were his exact words?

A. He asked me if that man was under arrest. I said yes. He said for me to bring him out and book him.

Q. What happened then?

A. I don't know. I went to roll-call room, someone had called me back there from the Armed Service Police.

Q. Did you ever see Mr. Wainwright again that morning?

A. I don't think so, Mr. Spencer. I don't recall.

Q. No further questions.

ATTORNEY J. B. KIEFER TO OFFICER E. BOEPPLE:

Q. You are a member of the New Orleans Police Department?

A. I am.

Q. So employed on Friday, October 13, 1964?

A. I was.

Q. No other questions.

OFFICER JOHN OTTESEN, CALLED BY DEFENSE:

OFFICER JOHN OTTESEN, BEING FIRST DULY SWORN, TESTIFIED:

ATTORNEY DAN A. SPENCER TO OFFICER JOHN OTTESEN:

Q. State your name please.

A. John Ottesen.

Q. What is your occupation?

A. Police patrolman assigned to the First District.

Q. Have you ever seen Mr. Wainwright before?

A. I have.

Q. When did you first see him?

A. Friday, October 13, 1964 about 12:30 AM.

Q. Did you arrest him that night?

A. I did.

Q. Did you bring him to the First District Station?

A. Correct.

Q. What did you do when you brought him to the station?

A. When we brought him to the station we brought him into the Interrogation Room; questioned him as to his name, place of birth, etc.

Q. Did he answer these questions?

A. He answered his name; where he lived, and said he was a law student. He didn't want to tell us any other information.

Q. Did he ask to use the telephone?

A. I don't know.

Q. You don't recall whether or not he asked you?

A. I don't remember.

COURT:

He may have?

OFFICER JOHN OTTESEN:

It's possible.

ATTORNEY DAN A. SPENCER TO OFFICER JOHN OTTESEN:

Q. How long was he in the Interrogation Room?

A. Ten or fifteen minutes, and we telephoned for the Lieutenant.

Q. Where was he?

A. Out in the car.

Q. What did you call him for?

A. We had a possible suspect in a murder case. We needed someone of higher knowledge to question the subject. We also notified the Detective Bureau.

Q. Why did you notify the Detective Bureau?

A. They had specifically asked us to check the vicinity of the French Quarter for a suspect wanted in a murder case.

Q. Why did you call them?

A. Suspect fitted the description of the wanted subject.

Q. Did you call them to send someone?

A. They had a better knowledge of the person than we had.

Q. What happened when Lt. Martello arrived?

A. The Lieutenant asked him a few questions; he said his name; where he lived; and that he was a law student.

COURT:

The Court at this time is offering an instanta subpoena to Mr. Spencer if he wishes to have these two individuals with the Detective Bureau available so that they can answer if they knew one Johnnie McTaylor.

ATTORNEY DAN A. SPENCER TO OFFICER JOHN OTTESEN:

Q. What happened then after you called the De-

tective Bureau, and Lt. Martello arrived, what did you do, did you leave the prisoner, or did you stay there while he was booked?

COURT:

Subsequent to the calls to Lt. Martello and the Detectives' office, what did you do, Officer Ottesen?

OFFICER JOHN OTTESEN:

Lt. Martello arrived and he questioned Wainwright, and wanted Mr. Wainwright to remove his jacket, because this was a vital incident in his identification, as to whether he was Johnnie McTaylor or not.

ATTORNEY DAN A. SPENCER TO OFFICER JOHN OTTESEN:

Q. Did you ever search Mr. Wainwright?

A. Yes, when we first interrogated the suspect.

Q. Did he have any weapons on him?

A. No.

Q. Were you certain he had no weapons on him?

A. We gave him a quick frisk — a pat down.

COURT:

Were you reasonably certain he didn't have any weapons on him based upon your frisk?

OFFICER JOHN OTTESEN:

I was satisfied that he didn't have a weapon.

ATTORNEY DAN A. SPENCER TO OFFICER JOHN OTTESEN:

Q. Were you present in the First District Station when he was booked?

A. Yes.

Q. Had his jacket been taken off of him when he was booked?

A. He was asked to remove his jacket by Lt. Martello.

COURT:

Prior to the booking, was his jacket on or not?

OFFICER JOHN OTTESEN:

He had his jacket on.

ATTORNEY DAN A. SPENCER TO OFFICER JOHN OTTESEN:

Q. Did he have his jacket on at the time that he was booked?

A. I don't remember.

Q. Do you remember his ever having asked to make a telephone call after he was booked?

DEFENDANT STEPHEN WAINWRIGHT TO THE COURT:

This officer here (indicating Officer O'Rourke) has been nodding his head.

ATTORNEY J. B. KIEFER:

If this officer is coaching this witness . . .

ATTORNEY DAN A. SPENCER:

The Court's instructions have been violated.

ATTORNEY DAN A. SPENCER TO OFFICER JOHN OTTESEN:

Q. Was Officer O'Rourke making signals to you?

A. Not to my knowledge.

Q. Did you see him?

A. You were standing right where he was seated.

COURT:

Have any of your statements been influenced by any one in this Court Room?

OFFICER JOHN OTTESEN:

No, sir.

ATTORNEY DAN A. SPENCER TO OFFICER JOHN OTTESEN:

Q. Do you recall Mr. Wainwright either before, or

after being booked, asking to use the telephone?

A. He might have. We explained he had to be booked and then use the 'phone.

Q. Why did he have to be booked before using the telephone?

A. Procedure.

Q. Is there a sign over there in the District Station?

A. Yes.

Q. Do you remember what it says?

A. I know they are allowed to use the telephone. Every instance I ever handled they were booked and then allowed to use the 'phone.

Q. In this case defendant was interrogated before he was booked? He wasn't booked immediately after being brought into the Station, is that not true?

ATTORNEY J. B. KIEFER:

I object.

COURT:

Answer the question.

OFFICER JOHN OTTESEN:

He was interrogated.

ATTORNEY DAN A. SPENCER TO OFFICER JOHN OTTESEN:

Q. Before being booked?

A. Correct.

Q. Before being allowed to make a telephone call?

A. We asked him the same questions that we asked him out on the street.

Q. You were interrogating him about a possible murder case?

A. No. We wanted to establish his place of birth.

Q. You didn't ask him if he was Johnnie McTaylor?

A. I don't believe we ever asked him out right. I didn't ask him.

Q. You did interrogate him about possible murder suspect?

A. Correct.

Q. Before you booked him?

A. Yes we did.

Q. No further questions.

ATTORNEY J. B. KIEFER:

No questions.

STEPHEN R. WAINWRIGHT, DEFENDANT, BEING DULY SWORN, TESTIFIED:

ATTORNEY DAN A. SPENCER TO STEPHEN R. WAINWRIGHT:

Q. State your name.

A. Stephen R. Wainwright.

Q. What is your occupation?

A. Graduate law student working for a lawyer in Massachusetts.

Q. For whom do you work?

A. George L. Wainwright.

Q. Is he related to you?

A. He is my father.

Q. On October 13th., 1964, what was your occupation?

A. Student of Law at Tulane University here in New Orleans.

Q. Have you since graduated from Tulane?

A. Yes, I have.

Q. You now have a Law Degree?

A. I have.

Q. Do you have any other College Degrees?
A. A Bachelor of Arts in Psychology from Wesleyan University.

Q. Do you have any previous convictions?
A. None.

DECISION OF THE COURT

I find the defendant guilty and sentence him to pay a fine of $25.00 or serve thirty days in jail on each charge, and I am suspending same.

ATTORNEY DAN A. SPENCER:
I wish to file a Motion for an Appeal.

COURT:
Granted.

CERTIFICATE

I hereby certify the foregoing to be a true and correct copy of the transcript of testimony and notes of evidence in the above numbered and entitled cause.

New Orleans, Louisiana, July 30, 1965.

/s/ ANDREW G. BUCARO
ANDREW G. BUCARO,
JUDGE.

/s/ GERRY HEATON
GERRY HEATON,
STENOGRAPHER.

APPENDIX C

OFFICE OF THE DISTRICT ATTORNEY
STATE OF LOUISIANA
PARISH OF ORLEANS

OCTOBER 16, 1964

STATEMENT OF:

DAN A. SPENCER, W/M, Age 25 years.

RESIDING:

829 Ursuline Street, Apt. 3, New Orleans, La.

RE:

Complaint against Lt. Martello, and Ptn. Wilson of the New Orleans Police Department.

STATEMENT

I am an attorney and I share an apartment with Mr. Stephen Wainwright. Shortly after 1:00 A.M., Tuesday, October 13, 1964, about 1/2 hour after Mr. Wainwright had left our residence, I received a telephone call from him and he informed me that he had been picked up by the police and beaten, and asked me to come to the First District Police Station and get him out of jail. I immediately proceeded to the First District Police Station, asked the officer on duty at the desk whether Mr. Wainwright was being held there, and he informed me that Mr. Wainwright had been arrested and had been taken to the Bureau of Identification of the Police Department. I asked that Mr. Wainwright be brought back immediately so that I could confer with him and identified myself as an attorney representing Mr. Wainwright. Police officers stated that they would not bring him back at that time and that it might be several hours before they would bring him back. I explained to them that I had been told that Mr. Wainwright

had been beaten and that as his attorney I had a right to see him immediately and if necessary, to see that he got proper medical attention. A Lt. Martello informed me that he was one of the arresting officers and ordered me not to get smart with him. At my insistance on seeing Mr. Wainwright immediately, and my right to do so, another police officer stated that I was "a real smart-aleck". When I continued to protest their holding Mr. Wainwright, without allowing his counsel to see him, I was ordered from the police station. I refused to leave the police station and was then arrested by the police and charged by Lt. Martello and Ptn. Wilson with reviling the police and refusing to move on. I was refused the right to make a telephone call until after I had been searched and booked. I was then allowed to call Judge Julian Samuel of the Fourth Circuit Court of Appeal of Louisiana, and Judge Samuel informed the police officers in my presence that he was paroling me. I was then taken to a cell designed for 4 prisoners which already held 6 prisoners, and was held there for approximately 1 hour. Immediately upon their releasing me sometime between 2:30 A.M. and 3:00 A.M. I called Judge Bossetta of the Municipal Court of New Orleans and he stated that he was going to immediately parole Mr. Wainwright. The police nevertheless refused to release him until sometime between 4:30 and 4:45 A.M. Tuesday morning although I told them that Mr. Wainwright had been paroled. Immediately after Mr. Wainwright's release I drove him to Touro Infirmary where he was examined by a physician for the numerous injuries he received in the beating by the police.

/s/ DAN A. SPENCER

DAN A. SPENCER

WITNESSED:

/s/ LORRAINE G. LE BOUEF

STATE OF LOUISIANA
PARISH OF ORLEANS

OCTOBER 16, 1964

STATEMENT OF:
STEPHEN R. WAINWRIGHT

RESIDING AT:
829 URSULINE ST., APT. 3

RE:
AFFIDAVIT NO. J-7405-64

At about 12:30 A.M. the 13th of October, 1964, I left my apartment on Ursuline Street after studying for about six hours and walked down Bourbon Street. I had gotten about three or four blocks when a patrol car stopped, backed up and the officers got out and stopped me. They asked me where I was going and I said I was going to get something to eat. They asked me my name and I told them. They asked me where I lived and I told them. They asked me where I worked and I said I did not work, that I was a student at Tulane University. Then they asked me for identification and I said I did not have any, that it was at my apartment. They at this time said they were looking for a man and that I looked like the man. They ordered me to remove my jacket and be inspected to see if I had a tatoo on my back. I refused. Upon my refusal, Officer Boepple returned to the patrol car and got a small piece of paper on which I presumed was the description of the wanted man. He compared it with me and again asserted his demand that I remove my clothing. I said, "I have given you the necessary information—my name, my address and where I go to school. I refuse to remove my clothing." He said, "All right, you are coming with us." I asked him if I was under arrest and he said yes. I asked

what was I under arrest for and he said vagrancy by loitering. I asked if I could go to my apartment to get my identification. I then got in the front seat of their car and they told me to get in the back seat and we drove off. Instead of taking me to my apartment to get my identification, they took me to the First District Police Station. When I realized they were not giving me an opportunity to get my identification I said, "Of all the stupid —. I did not finish the sentence. The officers immediately stopped the car and said, "What did you say?" I did not answer. Officer Boepple turned to Officer Otteson and said, "Reviling the police." After this I remained completely silent until we reached the First District, whereupon I was put in the Interrogation Room. Again I asked was I under arrest and they said yes I was. I then demanded the right to call my attorney. They refused to let me out of the room and told me I could not leave the room until I took my clothes off. I re-asserted my right to use the phone and they said I had no right to use the phone until after I had been booked. They also said that they were waiting for two detectives to arrive who could identify this mystery man by sight. Then we waited for about twenty minutes, whereupon I was brought out of the Interrogation Room where Lt. Martello was. He said, "So, the S.O.B. refused to take his clothes off. Bring the M.F. over here and we will take them off for him." I was then brought in front of the booking desk and six officers pounced upon me, stretched my arms out, twisted my wrists, put a handcuff on my right hand so tight that it cut off the circulation and while bent over, Officer O'Rourke came around in front of me and kneed me in the groin. They then took off my clothes and examined my back. Then I was booked. I requested that they undo the handcuff and they refused. Not until the booking process was over did they finally loosen the cuff. At this time I

was permitted to make one phone call. I called my attorney and weeping told him to get to the First Police Police Station as soon as possible. As soon as I hung up the phone, I was immediately taken across town where I was placed in a basement cell. I requested medical attention but was told that I would be able to see a doctor when they were through with me. Approximately 2 hours later they brought me upstairs, photographed me and fingerprinted me. After this I was returned to the paddy wagon and driven back to the First District where I arrived about 4:30 A.M. My attorney was waiting. They returned my torn clothing and gave me an affidavit. I informed the officers present of my injuries and then left the station to go to the Touro Infirmary where I was treated by Dr. Levy.

/s/ STEPHEN R. WAINWRIGHT

STEPHEN R. WAINWRIGHT